

Subject: KAREN SRCC Factual Responses : CONFIDENTIAL SETTLEMENT DISCUSSIONS - Proposed Stipulated Order Conditions
Date: Thursday, April 18, 2019 at 12:13:16 PM Pacific Daylight Time
From: Salt River
To: Donovan, Karen@BCDC, Zeppetello, Marc@BCDC
Attachments: Exec Dir Recommended Decision.pdf, Proposed CDO.pdf, 3.27.18 Exhibit J FC RP Email To Mark D USACE RE Barges.pdf, 11..pdf, 20. .pdf, 20180410 Foster City USACE Disposal Logs (1).pdf

Karen & Mark :

Ask that our BCDC objectively review our **below reinforcement of previous facts** and delineation of erroneous data by Foster City's .

Tantamount and of most import as established by facts below is SRCC **never once received** any directive in writing or orally from Foster City or any regulatory agency that the dredge barges SRCC deployed to conduct the City's fully permitted dredging were ever positioned where any mandated violations or environmental regulations existed.

Furthermore, even though the IN WATER dredging extension was 2/2/18, the final pump off per our contact with Foster City which included barges both positioned within Belmont Slough and in transit to Cullinan Ranch was completed to the satisfaction of all concerned on April 11th 2018.

In conjunction with reinforcement of what we have established herein is fully forthright we standby our prior and present position that this matter before BCDC be dismissed.

Kindly confirm receipt when able.

Respectfully,

Team SRCC

Salt River Construction Corporation
300 Trinidad Drive
Tiburon, CA 94920
P: 415-435-1024
F: 415-366-2527

----- Forwarded message -----

From: **Donovan, Karen@BCDC** <karen.donovan@bcdca.gov>
Date: Fri, Feb 8, 2019 at 6:24 PM
Subject: Re: SRCC Responses : CONFIDENTIAL SETTLEMENT DISCUSSIONS - Proposed Stipulated Order Conditions
To: Salt River <contact@saltriverco.com>
Cc: Zeppetello, Marc@BCDC <marc.zeppetello@bcdca.gov>

Team SRCC,

Thank you for your email. After reviewing your objections, we have determined that it is appropriate

to reduce the time period for which we are assessing penalties for the unauthorized mooring of vessels from 55 days, as set forth in the Violation Report that was sent to you June 26, 2018, to 53 days. You state that Foster City should not have been dismissed from our discussions, presumably because they were the permittee for the dredging project. We have reviewed the emails provided to BCDC indicating that Foster City requested, and was provided, an extension to February 2, 2018 for work on the dredging project. **BCDC is correct that dredging in water dredging was extended to February 2, 2018. However, offloading of smaller dredge scows by transferring dredge spoils with excavators into our one thousand (1,000) yard hopper barges positioned within Belmont Slough was conducted up until April 11th in strict conformance per our specified contract working day(s) time and subsequently every regulatory permit connected to Foster City's signed contract with us.** After that, due to concerns regarding Ridgway's rail and other resources, the dredging project as authorized by BCDC was to be completed. In light of the extension, rather than commencing the penalties for unauthorized mooring of the vessels on February 1, we are starting these on February 3, 2018, after the dredging project authorized by the Permit No. M1978.057.02, as extended, was to be completed. This results in an overall \$1,000 reduction in the penalties for the two violations. **As explained above SRCC did indeed complete IN WATER dredging activities in full accord with agency permits however the balance of the dredging through final pump deadline at Cullinan Ranch was on or before April 30th 2018 as contractually established with Foster City. Thereafter, all necessary facets that were not in any way IN WATER work but ancillary and necessary work for transferring dredged materials from small barges to larger barges, towing to Cullinan ranch, pumping off and then returning to repeat all was completed as managed by Foster City and its consultants on April 11th 2018 which is supported by the final approved and attached USACE dredge material disposal logs.**

BCDC staff does not agree that the penalties assessed are severe, and the other objections that you have set forth, as well as the statements in the statement of defense that you attached, do not justify a change to the proposed cease and desist and civil penalty order. SRCC was instructed **(SRCC was NEVER instructed in writing or otherwise)** on several previous occasions not to moor vessels or store equipment without authorization, **In reality SRCC deployed its dredging plants to undertake our contractual agreement with Foster City within the confines of Belmont Slough with full approval and under daily onsite observations by Foster City and its approved project biological observer as clearly illustrated in the attached PDF that Robert Perrera (RP) delivered to BCDC on April 2nd 2018. This same email also provided erroneous dates and information particularly where RP completely misinformed BCDC that the last dredge barge on site January 1st 2018 which the USACE logs and Foster City construction management records prove wholly otherwise as April 11th 2018.** that by in part due to the risk of damage to resources, as well as the safety and other issues involved. The McAteer-Petris Act, Government Code Section 66641.9, states that in determining the amount of administrative civil liability, the Commission shall take into consideration the nature, circumstance, extent, and gravity of the violation, as well as, with respect to the violator, a number of other factors, including any prior history of violations. A significant factor in undertaking this action is to ensure that you cease the continuing violations.

You state that you have no personal knowledge that BCDC received emails about the mooring of your barges and that there is no exhibit, map, or diagram establishing where the alleged unauthorized moorings occurred. For your reference, we have attached emails that are included in the Administrative Record for this action. **The sole exhibit map referenced and enclosed clearly illustrates**

that SRCC barges were positioned only within Belmont Slough which was the route that was used to tow smaller barges over sixty (60) times for transferring dredge materials to Hopper Barges which were then towed to Cullinan Ranch for pumping off. These document the contacts, and they indicate that you were also contacted by Foster City and/or the Corps regarding the presence of the barges long after the authorized dredging project had concluded. **The established disconnect herein is that the COMPLETE authorized dredging project was not concluded with Foster City until the final City fully approved contract established and recorded working date/time of April 11th 2018 .**

As we previously noted, this is scheduled for presentation to the Enforcement Committee on Thursday, February 21. The meeting will begin at 9:30 a.m., and you may appear and present your position and defenses to the Committee at the meeting. Note that the Commission meets at 375 Beale Street in San Francisco. I have attached the Executive Director's Recommended Decision and the Proposed Order. These are also being sent to you, along with the agenda and other documents, via regular mail.

Thanks and feel free to contact us if you have any further questions or comments.

-Karen Donovan

From: Salt River <contact@saltriverco.com>

Date: Friday, February 8, 2019 at 9:03 AM

To: "Donovan, Karen@BCDC" <karen.donovan@bcdc.ca.gov>

Cc: "Zeppetello, Marc@BCDC" <marc.zeppetello@bcdc.ca.gov>

Subject: SRCC Responses : CONFIDENTIAL SETTLEMENT DISCUSSIONS - Proposed Stipulated Order Conditions

Karen & Mark :

SRCC asks that BCDC objectively consider our objections to the Civil Penalty Order and specifically the following assessed penalties .

A1. SRCC firmly believes that we established during our mutual discussions that there was less than minimal disturbance created and takes complete exception to this proposed penalty.

A2 & A3 . SRCC does not concur that the moorings were unauthorized in concert with the prior facts surrounding these allegations .

The record is clear that Foster City (FC) and its designated consultants were wholly responsible that every specific facet of near innumerable biological requirements were strictly adhered to for the entirety of the outfall dredging project .

SRCC remains steadfast that FC and its consultants did not in even one (1) instance ever inform us in a manner that any of SRCC's numerous dredge scows that were deployed to undertake this most difficult dredging project were ever positioned, moored or navigated other than in full compliance with every single contract specification including local, state and federal requirements .

Furthermore, SRCC would be remiss if we did not interject at this juncture that BCDC's decision to dismiss FC from our collective meeting and round table discussions at the moment when the issue of these current penalties was to be broached eliminated a distinct opportunity the certitudes delivered prior to the meeting . SRCC has again enclosed the document that was not probed at the referenced meeting.

Another glaring deficiency is that to our knowledge there is no exhibit , map, diagram or plan that indicates and establishes where the alleged unauthorized moorings occurred whereby without an apparent document this raises conjecture.

Therefore in accord with what the demonstrated facts SRCC cannot in good faith agree to the proposed severe fines .

SRCC respectfully requests that BCDC consider all herein and seek a more equitable solution to the present dilemma which includes all participants and concerned parties .

Believe we have delivered our reply for your impartial concentrated review.

Sincerely,

Team SRCC

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Salt River Construction Corporation

300 Trinidad Drive

Tiburon, CA 94920

P: 415-435-1024

On Wed, Feb 6, 2019 at 5:56 PM Donovan, Karen@BCDC <karen.donovan@bcdcc.ca.gov> wrote:

Team SRCC,

Thanks for getting back to us. In order to meet our schedules and deadlines, we will need your input by 9:00 a.m. on Friday in order to consider any revisions prior to the mailing. If you can't provide input by that time, we can still consider and discuss it prior to the BCDC Enforcement Committee hearing and, if we can reach a mutual agreement on the proposed Order, we can jointly propose revisions to the proposed order to the Committee.

Please feel free to call me if you have any questions.

-Karen

From: Salt River <contact@saltriverco.com>

Date: Wednesday, February 6, 2019 at 2:20 PM

To: "Donovan, Karen@BCDC" <karen.donovan@bcdcc.ca.gov>

Cc: "Zeppetello, Marc@BCDC" <marc.zeppetello@bcdcc.ca.gov>

Subject: Karen : CONFIDENTIAL SETTLEMENT DISCUSSIONS - Proposed Stipulated Order Conditions

Karen :

(415) 352-3628 – office

(415) 948-7449 - cell

SRCC expects to email our input NLT this Friday by 2:00 PM .

Appreciate you keeping in touch with us.

Thank you,

Team SRCC

Salt River Construction Corporation

300 Trinidad Drive

Tiburon, CA 94920

P: 415-435-1024

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On Tue, Feb 5, 2019 at 5:06 PM Donovan, Karen@BCDC <karen.donovan@bcdc.ca.gov> wrote:

Kevin, Rick & Steve,

I wanted to check in again to see if you have any input on the draft proposed Cease and Desist and Civil Penalty Order that we sent to you on January 24. As we noted previously, we will need to hear from you in the next few days. We are currently working on finalizing this for mailing this Friday, February 8.

Thanks.

-Karen Donovan

From: "Donovan, Karen@BCDC" <karen.donovan@bcdc.ca.gov>

Date: Thursday, January 24, 2019 at 3:48 PM

To: Salt River <contact@saltriverco.com>

Cc: "Zeppetello, Marc@BCDC" <marc.zeppetello@bcdc.ca.gov>

Subject: CONFIDENTIAL SETTLEMENT DISCUSSIONS - Proposed Stipulated Order Conditions

Kevin, Steve & Rick,

As a follow up to our conversation earlier this week, a draft proposed Cease and Desist Order is attached for your review. We would like to discuss whether you would be willing to agree to this (i.e. stipulate) rather than contesting it at a BCDC Enforcement Committee hearing. We also discussed your suggestion of a site

visit with staff and do not believe that a visit to Foster City would be beneficial, but we are willing to discuss this draft order and any additional comments you want to provide in relation to the activities in Belmont Slough, either on the phone or in person if you prefer. As a reminder, we are planning to take this to the Enforcement Committee on February 21, and in order to meet our deadlines, we will need to hear from you as soon as possible to discuss any remaining issues and finalize the proposed order for mailing on February 8.

Thanks,

-Karen

Karen Donovan

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455 Golden Gate Avenue

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